IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-08-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE R. BANUMATHI

HABEAS CORPUS PETITION NO.267 OF 2007

S. Mariyappa,
S/o. Sithappa .. Petitioner

Vs.

1. The State of Tamil Nadu,
   rep. by its Secretary,
   Prohibition & Excise Department,
   Fort St. George,
   Chennai 600 009.

2. The District and Magistrate
   District Collector,
   Krishnagiri District,
   Krishnagiri. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Habeas Corpus calling for the records in Detention Order dated 7.1.2007 bearing S.C.No.57/2006, on the file of the 2nd respondent and set aside the same and direct the 2nd respondent to produce the body of petitioner's brother Thiru. Pappanna now confined in Central Prison, Salem before this Court and set him at liberty.

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For Petitioner : Mrs.R. Subadra Devi

For Respondents : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

P.K. MISRA, J

Brother of the detenu has filed this Habeas Corpus Petition for quashing the order of detention passed under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) on the allegation that the detenu is a Goonda.

2. The detenu came to the adverse notice of the police in four adverse cases, namely, Mathigiri P.S. Cr.No.237/2001 registered under Sections 147,148,341,307 & 302 IPC, Mathigiri P.S. Cr.No.237/2001 registered under Sections 363 @ 364, 368, 302 r/w.120(b) IPC., Hosur Police Station Cr.No.320/2006 registered under Sections 147, 148, 302, 120 (b) IPC., and Hosur P.S. Cr.No.636/2006 registered under Sections 386 IPC. First two adverse cases were pending trial and the later two adverse cases were under investigation, when the order of detention was passed on 7.1.2007. The order of detention was passed on the basis of the ground case alleged to have occurred on 15.12.2006 in Hosur Police Station Cr.No.637/2006 registered under Section 386 IPC. The detenu surrendered before the Judicial Magistrate No.IV, Vellore on 19.12.2006 in connection with the aforesaid case and was remanded.

3. The detaining authority after narrating the incident in the ground case came to the conclusion that it was necessary to detain the person under Act 14/1982. In paragraph 4, the detaining authority concluded :-

> "4. I am aware that Thiru. Pappanna is in remand in Hosur Police Station Cr.No.637/2006, u/s.386 IPC and has not moved any bail application. I am also aware that there is real possibility of his coming out on bail by filing bail application for the above case since in similar cases bails are granted by the concerned Court or Higher Courts after lapse of time. If he comes out on bail, he will continue to indulge in same activities, which will be prejudicial to the maintenance of public order. Further the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities which are prejudicial to the maintenance of public order. ..."

4. Learned counsel for the petitioner has raised the following contentions :-

(1) There has been delay in consideration of the representation dated 15.2.2007.

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(2) The alleged crime could have been dealt with under ordinary law since it did not have tendency of affecting the public order. Therefore, the detention order should not have been passed.

(3) The detaining authority has not at all considered the possibility of the detenu being released on bail in connection with 3rd and 4th adverse cases, which were registered under Section 302 and 386 IPC respectively and, therefore, the order of detention is quashed.

5. The first contention of the learned counsel for the petitioner is that there was delay in disposal of the representation and the communication of the result thereof. Even though counter has not been filed, learned Addl. Public Prosecutor has produced before us a chart indicating various dates on which the representation was dealt with at various stages. From such chart it is apparent that the representation dated 15.2.2007 was received on 19.2.2007 and remarks were called for on the very same day, but remarks were furnished only on 13.3.2007, after a lapse of about 24 days. From such chart it appears that the representation was received in the Collectorate on 22.2.2007, but parawar remarks were called for on 27.2.2007 and remarks were received from the Sponsoring Authority on 8.3.2007, but such report was sent to the Government only on 12.3.2007. No explanation is forthcoming explaining such yawning gap between the date on which the remarks were called for and the date on which the remarks were received; particularly there is no explanation as to why in the Collectorate such long time was taken for calling parawar remarks and after receiving such remarks, sending such report to the Government. In the absence of any explanation, we are constrained to hold that the order of detention has become vitiated on account of unreasonable and unexplained delay in dealing with the representation.

6. The incident on the basis of which the ground case was registered has been narrated by the detaining authority in paragraph 2 of the grounds of detention. From the said narration it is apparent that one Murugan filed complaint on 15.12.2006. In such written complaint, it was indicated that he had come to Hosur bus stand along with his brother on 5.12.2006. At that time four persons including the detenu waylaid the complainant and his brother and threatened the complainant by stating that his brother has given evidence in court against them and they would not leave him. They also obtained cellphone number of the complainant. On the next day, one Kora Gobi contacted over cellphone and threatened by saying that the complainant's brother had given evidence and demanded a sum of Rs.3 lakhs otherwise the complainant's brother would be killed. Out of fear, the complainant went to Muneeswar Hotel, Hosur on 6.12.2006, where the detenu, Raja, Senthil, Athil and Naresh were present and they enquired whether he had brought money. Complainant handed over Rs.1 lakh. Thereafter, Kora Gopi frequently threatened him over cellphone and since a complaint was filed against him, Kora Gopi's wife was arrested.

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Subsequently, the Sub-Inspector of Police registered case in Hosur Police Station Cr.No.637/2006 under Section 386 IPC. In paragraph 3 of the grounds of detention, the detaining authority came to the conclusion that on the above materials he was satisfied that the detenu was acting in a manner prejudicial to the maintenance of public order.

7. From different adverse cases narrated, it is apparent that the detenu was a Goonda within the meaning of the term as defined under Section 2(f) of the Act. However, an order of detention under Act 14/1982 in respect of a Goonda can be passed only with a view to prevent such Goonda from acting in a manner prejudicial to the maintenance of public order. A careful perusal of the grounds of detention, particularly paragraphs 2,3 and 4 leaves no room for doubt that the detaining authority came to the conclusion that an order of detention is required to be passed on account of the crime registered as Cr.No.637/2006 under Section 386 IPC.

The extorted money of Rs.1 lakh was handed over to the deenu and his associates inside a hotel room. Threatening to give such money was given by a talk over cellphone. Keeping in view such aspects, we are inclined to accept the contention of the petitioner that such incident, which was the basis for coming to the conclusion that it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of public order, is unsustainable. The incident clearly raises a question of "law and order situation" rather than "public order situation". It is therefore difficult to sustain such an order of detention.

8. The last point raised by the petitioner is also acceptable. We have already extracted the observations of the detaining authority in paragraph 4 of the grounds of detention, which reflects the satisfaction of the detaining authority regarding the possibility of the detenu being released on bail. Even a cursory reading of paragraph 4 clearly indicates that the detaining authority was considering the possibility of the detenu being released on bail in connection with the ground case Cr.No.637/2006. Even assuming that the ground case was justified, it is apparent that the detaining authority has not at all considered the possibility of the detenu being released on bail in connection with 3rd and 4th adverse cases. The recitals in the grounds of detention relating to 3rd and 4th adverse cases clearly indicate that the detenu, who had surrendered in connection with those cases on 19.12.2006, had also been remanded in connection with those two cases on 22.12.2006. In other words, the detenu was in custody in connection with three cases, namely, Mathigiri P.S. Cr.No.31/2005 under Sections 363 @ 364, 368, 302 r/w.120(b) IPC., Hosur Police Station Cr.No.320/2006 registered under Sections 147, 148, 302, 120(b) IPC., and Hosur P.S. Cr.No.636/2006 registered under Sections 386 IPC. It is to be remembered that in Hosur Police Station Cr.No.320/2006 the offence under Sections 147, 148, 302, 120(b) IPC., has been committed. The offences thus alleged to have committed in the adverse cases were more serious or at least equally serious as compared to the alleged crime committed in the ground case and yet there has been no application of mind on the part of the detaining authority regarding possibility of the detenu being released on bail in connection with two earlier cases. In the above context,

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learned counsel appearing for the petitioner has brought to our notice several Division Bench decisions of this Court such as H.C.P.No.466 of 2004 disposed of on 16.9.2004, H.C.P.No.841 of 2006 disposed of on 21.11.2006, H.C.P.NO.1255 of 2006 disposed of on 23.3.2007. It is also to be kept in view that the detenu has surrendered in connection with those two cases only on 19.12.2006 and the detention order had been passed on 7.1.2007, hardly 18 days thereafter and, therefore, the question of obtaining statutory bail as contemplated under Sections 167(2) proviso of the Code of Criminal Procedure did not at all arise at that stage. It is no doubt true that detention order can be passed in respect of a person who is already in custody as has been observed by the Supreme Court in (1990)1 SC 746 (KAMARUNNISSA v. UNION OF INDIA) that the detaining authority can pass an order of detention provided the detaining authority comes to the conclusion that there is imminent possibility of the detenu being released on bail.

9. Having regard to all these aspects, there is no other alternative then to come to the conclusion that the detaining authority without application of proper mind has passed the order of detention.

10. Narration of the adverse cases and the ground case indicate the alleged involvement of the detenu in several serious offences including three cases under Section 302 IPC and two cases under Section 386 IPC. There is no doubt that the allegations are very serious and even the detenu can be considered as a hardened criminal, yet we are constrained to quash the order of detention as the order appears to have been passed mechanically without proper application of mind. In this context, we can only remind ourselves the sentiments expressed by the Supreme Court in AIR 1980 SC 1183 (SMT. ICCHU DEVI CHORARIA v. UNION OF INDIA AND OTHERS):

> "3. . . . We may point out straightaway that we are not at all happy at the thought that our order may have resulted in setting free a possible smuggler. We are not unmindful of the fact that the COFEPOSA Act has been enacted for the purpose of eradicating the evil of smuggling which is eating into the vitals of the nation like a cancerous growth and eroding the economic stability of the country and when an order is made by the Court releasing a person detained under this Act, it is quite possible that the effect of the order may be to let loose on the society, a smuggler who might in all probability, resume his nefarious activities causing incalculable mischief and harm to the economy of the nation. But at the same time we cannot forget that the power of preventive detention is a draconian power justified only in the interest of public security and order and it is tolerated in a free society only as a necessary evil. The power to detain without trial is an extraordinary power constituting encroachment on personal liberty and it is the solemn duty of the Courts to ensure that this power is exercised strictly in accordance with the requirements of the Constitution and the law. The courts

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should always lean in favour of upholding personal liberty, for it is one of the most cherished values of mankind. Without it life would not be worth living. It is one of the pillars of free democratic society. Men have rightly laid down their lives at its altar in order to secure it, protect it and preserve it. The Constitution has therefore, while conceding the power of preventive detention, provided procedural safeguards with a view to protecting the citizen against arbitrary and unjustified invasion of personal liberty and the courts have always zealously tried to uphold and enforce these safeguards. This Court has also through its judicial pronouncements created various legal bulworks and breakwaters into the vast powers conferred on the executive by the laws of preventive detention prevalent at different points of time. It is true that sometimes even a smuggler may be able to secure his release from detention if one of the safeguards or requirements laid down by the Constitution or the law has not been observed by the detaining authority but that can be no reason for whittling down or diluting the safeguards provided by the Constitution and the law. If the detaining authority wants to preventively detain a smuggler, it can certainly do so, but only in accordance with the provisions of the Constitution and the law and if there is a breach of any such provision, the rule of law requires that the detenu must be set at liberty, however wicked or mischievous he may be. The law cannot be subverted, particularly in the area of personal liberty, in order to prevent a smuggler from securing his release from detention, because whatever is the law laid down by the courts in the case of a smuggler would be equally applicable in the case of preventive detention under any other law. This court would be laying down a dangerous precedent if it allows a hard case to make bad law. We must, therefore, interpret the provisions of the Constitution and the law in regard to preventive detention without being in any manner trammeled by the fact that this is a case where a possible smuggler is seeking his release from detention."

11. For the aforesaid reasons, the Habeas Corpus Petition is allowed and the order of detention is set aside and the detenu is set at liberty forthwith unless his presence is required in any other case.

dpk

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Sd/-
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary,
   The State of Tamil Nadu,
   Prohibition & Excise Department,
   Fort St. George,
   Chennai 600 009.

2. The District and Magistrate
   District Collector,
   Krishnagiri District,
   Krishnagiri.

3. The Superintendent,
   Central Prison, Salem.

4. The Joint Secretary to Government,
   Public (Law & Order),
   Fort Saint George, Chennai-9.

5. The Public Prosecutor,
   High Court, Madras.

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